

**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES**

First Named Inventor : Wolfgang ORGELDINGER
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GOODS, ESPECIALLY FOR FRUIT AND
VEGETABLES
Attorney Docket No. : SCHO0590

June 15, 2011

MAIL STOP: APPEAL BRIEF - PATENTS

Honorable Commissioner of Patents & Trademarks
P.O. Box 1450
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REPLY BRIEF

Appellant's Reply Brief follows.

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STATUS OF CLAIMS

The status of the claims is as follows:

Claims 12-14, 16, and 17 are rejected. Claims 18-23 are withdrawn from consideration.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds for rejection are to be reviewed on appeal:

1. Whether Claims 12 and 14, which are rejected under 35 U.S.C. §103(a), are unpatentable over Heymann *et al* ("Heymann") US 4527707 in view of Sluiter (2002/0033392).
2. Whether Claims 12-14, and 17, which are rejected under 35 U.S.C. §103(a), are unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392).
3. Whether Claims 12-14, and 17, which are rejected under 35 U.S.C. §103(a), are unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and Heymann.
4. Whether Claims 12, 14, and 16, which are rejected under 35 U.S.C. §103(a), are unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392).
5. Whether Claim 17, which is rejected under 35 U.S.C. §103(a), is unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and further in view of Sterett (US 5361906).

ARGUMENTS

Appellant has carefully reviewed the Examiner's Answer with regard to the Grounds of Rejection, items 1 to 5 above, and understands that the Examiner has maintained the position already outlined in the proceedings so far.

One of the main issues that the Board is asked to consider in determining the propriety of the Examiner's rejections is whether Heymann, in Figs. 1 to 5, and the Dutch reference disclose a "lattice side face," as defined in Appellant's claims. The Examiner still relies on Heymann's Figs. 1-5 as teaching a lattice, even though he only shows a single opening. However, it is clear to Appellant that the Examiner overlooks that the specification of Appellant's application clearly refers to a "lattice-structured side wall part." One cannot limit the scope of the term "lattice," which is literally mentioned in the specification, to a single hole depicted in Heymann's Figs. 1-5. They are not the same thing in any reasonable way. The arguments that have been presented in Appellant's Appeal Brief regarding the term "lattice" are still valid and the Board is respectfully requested to consider the reason and merit that they present - a single hole in a wall does not make the entire wall a lattice. Because the specification as originally filed explicitly mentioned a "lattice-structured side wall" (see page 10, second paragraph "lattice-structured lateral wall parts") and applying the understanding as a man of ordinary skill would do, it is absolutely clear that Figs. 1 to 5 of Heymann and also the Dutch reference do not disclose a lattice-structured side wall part.

The Examiner mentions that Appellant failed to mention that Heymann teaches a lattice structure in Fig. 9. This conclusion is not justified. In a reply letter submitted by Appellant to the final Office Action Appellant explicitly made reference to, and

affirmatively addressed, this argument. The Examiner's approach of combining the teachings of Figs. 1 and 5 and of Fig. 9 of Heymann is not at all justified and is clearly done in an attempt to "construct" a disclosure of Heymann to "fit" the inventive solution. This is not what Heymann taught and this mere hindsight reconstruction of Appellant's claimed invention is only available with the benefit of Appellant's teachings in the subject application. When looking at the overall disclosure of Heymann, it is clear that the device of Heymann comprises a tray 12 (see Fig. 1 and also Fig. 9), which is called a "debris holding tray" (see column 4, lines 60 and 61). On the upper part of the tray either a structure 5, as shown in Fig. 1, or a structure as shown in Fig. 9 may be applied, wherein the respective top part to be put on top of the tray 12 in Fig. 9 has a lattice structure. The Examiner argues that when considering Fig. 9 a man of ordinary skill would consider providing the actual tray 12 with lattice-structured walls, a conclusion that clearly goes beyond anything that can be reasonably derived from the disclosure of Heymann. Actually, in view of the fact that the tray is a "debris holding tray" a man of ordinary skill recognizes that making this tray 12 in a lattice structure is not desired as otherwise it could not hold the debris anymore but, rather, it would fall off, which is in complete contradiction to the approach derivable from Heymann. Thus, it should be absolutely clear that Appellant did not overlook that Heymann teaches the lattice structure in Fig. 9, and it is unfair to mischaracterize the proceedings before the Office to create such an impression. What is clear and has already been addressed is that Heymann teaches that the top part is to be formed of a lattice structure but not the tray itself to which the top part is fixed and, thus, Heymann provides no guidance to the skilled person.

Thus, contrary to the Examiner's conclusion even when considering the disclosure of Heymann in Figs. 1 to 5 and in Fig. 9 one would not reasonably consider the possibility of making the tray 12 as comprising lattice-shaped lateral side walls as this would

render the debris holding tray of Heymann more or less useless.

Thus, the conclusion given by the Examiner that a person of ordinary skill derives from Heymann the possibility of modifying the tray 12 described by Heymann or the tray described in the Dutch reference with lattice-shaped lateral wall parts is not justified and is not at all supported by what can be derived reasonably from the disclosure of Heymann.

CONCLUSION

The arguments outlined by the Examiner in Issues 1 to 5 do not apply, as, first of all, neither Heymann nor the Dutch reference disclose a crate having lattice-structured side walls and, further, the disclosure of Fig. 9 of Heymann does not suggest modifying the crates of Heymann and the Dutch reference with a lattice-shaped lateral wall part. Thus, the arguments outlined in Appellant's Appeal Brief set forth the correct legal analysis and result with regard to Issues 1-5.

To establish a *prima facie* case of obviousness of a claimed invention, all the claimed features must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Because the cited art fails to teach or suggest a lattice as claimed by Applicant, the Examiner has failed to establish a *prima facie* case of obviousness.

As a result, Appellant respectfully submits that all rejections have been overcome and requests that the Board instruct the Examiner to pass the application to issuance.

Respectfully submitted,



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CLAIMS APPENDIX

1.-11. (canceled)

12. Transport container system, comprising:

a non-foldable or foldable crate,

the crate comprising a rectangular bottom and four rigid lateral wall adjoining the bottom and defining a rectangular opening in a plane parallel to the bottom,

a unitary top for augmenting height of the lateral walls of the crate and thereby providing a transport container of a increased volumetric capacity,

the top being constituted of a natural material and comprising four rigid lateral walls of sufficient strength to permit transport container stacking and defining a rectangular opening conforming to the rectangular opening of the crate, and

fasteners for attaching the top when unfolded, to the crate at the opening thereof so that the lateral walls of the top augment height of the lateral walls of the crate,

wherein the lateral walls of the crate are structured to define a lattice, and

wherein said fasteners are attached to the top and are releasably engageable with the lattice structured lateral walls of the crate.

13. Transport container system according to claim 12, wherein

the top has respective fold lines at corners thereof whereby the top is foldable into a compact configuration when not in use.

14. Transport container system according to claim 12, wherein

the top comprises wood or cardboard and is thereby suitable for disposal after single use.

15. (canceled)

16. Transport container system according to claim 12, further comprising corner stiffeners at corners of the top.
17. Transport container system according to claim 12, wherein said top can be folded up via fold lines in the corners,
on its side that faces the crate opening said top conforms in shape to the crate opening formed by said lateral walls of said crate, and
for stacking, at its side facing away from the crate opening and at its side facing the crate opening at least at the corner areas of said bottom said top is embodied with a profile that conforms a profile of said lateral wall parts of said crate and said bottom and that can be placed on the upper side of said lateral walls of said crate.
18. – 23. (Withdrawn)